

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1491 of 1999

in

SPECIAL CIVIL APPLICATION No 8246 of 1999

with

CIVIL APPLICATION NO. 12718 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AGRICULUTRAL PRODUCE MARKET COMMITTEE

Versus

DIRECTOR OF AGRICULUTRAL MARKETING & RURAL FINANCE

Appearance:

MR NAVIN K PAHWA for Appellant
MR. JOSHI, ASSTT. GOVT.PLEADER FOR RESPONDENTS 1
AND 3
MR PK JANI for Respondent No. 2

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 04/11/1999

ORAL JUDGEMENT

Admitted. Mr. P.K.Jani appears and waives service of notice of admission for respondent No. 2. Mr. Joshi, learned AGP waives service of notice of admission for respondent Nos.1 and 3. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against an order passed by the learned Single Judge in Special Civil Application No. 8246 of 1999 on October 22, 1999.

Being aggrieved by the order of removal passed by the Director of Agricultural Marketing and Rural Finance respondent No.1- on October 5, 1999, the above petition was filed by respondent No.2. A preliminary objection was raised on behalf of the present appellant before the learned Single Judge that statutory remedy of revision is available to the petitioner under Section 48 of the Gujarat Agricultural Produce Markets Act, 1963 and hence, High court may not entertain Special Civil Application. The learned Single Judge upheld the contention and disposed of the petition but while disposing of the petition, the learned Single Judge directed that the petitioner will file a revision application within a period of fifteen days from the date of order and that "till the State Government decides the revision application, the impugned order passed by the Director of Agricultural Marketing and Rural Finance shall remain stayed".

A serious grievance was made by the learned counsel for the appellant firstly on the ground that the order passed by the Director on October 5, 1999 and the petition was filed thereafter and the learned Single Judge granted relief on October 22, 1999 i.e. after seventeen days. Such an order could not have been passed which is of mandatory nature when the order was passed before more than two weeks.

Secondly, it was contended that when the learned Single Judge did not entertain the petition by upholding the preliminary objection and directed the petitioner to approach the revisional authority, he ought not to have granted interim relief. Reliance was placed in this connection on State of Orissa vs. Madan Gopal, AIR 1952 SC 12. It was submitted that even if the learned Single Judge intended to protect the petitioner for the time being, he could have granted interim relief for some time

so as to enable the petitioner to file a revision application and to obtain appropriate order. No direction, however, could have been issued to continue interim relief "till the State Government decides the revision application" depriving the revisional authority to apply his mind and exercise his power to grant or refuse interim relief.

Mr. Jani for the original petitioner, on the other hand, submitted that discretion has been exercised by the learned Single Judge and this is not a fit case which requires interference by this Court.

In the facts and circumstances of the case, and without entering into the merits of the matter, in our opinion, the learned Single Judge ought not to have granted interim relief "till the State Government decides the revision application". Without expressing any opinion on the merits of the matter, we are of the view that interest of justice will be met if interim relief is continued upto November 30, 1999 or till the revisional authority decides an application of interim relief. We may observe that we are not expressing any opinion on merits of the matter and it will be open to the respective parties to raise all contentions before the revisional authority.

For the foregoing reasons, LPA deserves to be partly allowed and is accordingly allowed. No order as to costs. No order on civil application.

parekh